

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

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Court of Appeals of the District of Columbia

APRIL TERM, 1927.

No. 4623.

434

LOUISE A. TILLINGHAST, APPELLANT,

vs.

GEORGE S. TILLINGHAST.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA.

FILED AUGUST 2, 1927.

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Court of Appeals of the District of Columbia

APRIL TERM, 1927.

No. 4623.

LOUISE A. TILLINGHAST, APPELLANT,

vs.

GEORGE S. TILLINGHAST, APPELLEE.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA.

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Court of Appeals of the District of Columbia

No. 4623.

LOUISE A. TILLINGHAST, Appellant,

vs.

GEORGE S. TILLINGHAST.

a Supreme Court of the District of Columbia.

Equity. No. 47186.

LOUISE A. TILLINGHAST, Plaintiff,

vs.

GEORGE S. TILLINGHAST, Defendant.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, That in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed, and proceedings had, in the above-entitled cause, to wit:

Petition to Affirm Marriage.

Filed July 6, 1927.

In the Supreme Court of the District of Columbia, Holding
an Equity Court.

Equity. No. 47186.

LOUISE A. TILLINGHAST, Plaintiff,

vs.

GEORGE S. TILLINGHAST, Defendant.

The petition of Louise A. Tillinghast respectfully shows
to the Court as follows:

1. That she is a citizen of the United States and a resident
of the District of Columbia; that she brings this suit in
her own right.

2. That the defendant, George S. Tillinghast, is a citizen
of the United States and a resident of the District of
Columbia; that he is sued herein in his own right.

3. That the plaintiff was formerly the wife of one Clement
E. Murphy, but that in a proceeding entitled Murphy vs.
Murphy, Equity No. 42465, in the Supreme Court of the
District of Columbia, the said Clement E. Murphy was
awarded an annulment of marriage on the ground that the
plaintiff herein was matrimonially incapacited because of
physical affliction at the time of marriage; that an inter-
locutory decree was entered in the said cause on Decem-
ber 11, 1925, and that final decree was entered therein on
March 22, 1926; that no appeal was taken by this plaintiff
from the said decree.

4. That on April 3, 1926, the plaintiff and the defendant,
George S. Tillinghast, contracted a ceremonial marriage at
Rockville, Maryland; that at the time thereof the facts sur-
rounding the annulment of the former marriage of the plain-
tiff were fully known by the defendant.

5. That to the said parties there has been born one
2 child, Georgia J. Tillinghast, born June 12, 1927.

6. That following their marriage, the defendant
refused to provide a home for the plaintiff, but that he main-

tained marital relations with her and lived with her intermittently until, to wit, December 5, 1926, on which date he permanently abandoned her; that he has taken no interest in the above-mentioned child and has contributed nothing whatsoever towards its support.

7. That the defendant now denies the validity of the marriage of the parties hereto, alleging that the said marriage was contracted while the plaintiff had a former husband living and that the former marriage had not been lawfully dissolved.

8. That the defendant is a musician and is regularly employed at a salary of \$67.00 per week.

Wherefore, the premises considered, the plaintiff prays:

1. That the United States writ of subpoena issue from this Court requiring the defendant, George S. Tillinghast, to appear herein and answer the exigencies of this petition.

2. That the marriage of the plaintiff and the defendant be affirmed and declared valid by the decree of this Court.

3. That the plaintiff be awarded, both pendente lite and permanently, a reasonable allowance for the maintenance of the infant child of the parties hereto.

4. And for such other and further relief as to the Court may seem just and proper.

LOUISE A. TILLINGHAST,
Plaintiff.

JEAN M. BOARDMAN,
Attorney for Plaintiff.

3 DISTRICT OF COLUMBIA, ss:

I, Louise A. Tillinghast, being first duly sworn according to law, depose and say that I have read the foregoing petition by me subscribed and know the contents thereof; that the matters and things therein alleged as of my own knowledge are true, and those alleged upon information and belief I believe to be true.

LOUISE A. TILLINGHAST,
Plaintiff.

Subscribed and sworn to before me this 2nd day of July, 1927.

SIMON H. ROURKE, [SEAL.]
Notary Public, D. C.

Motion to Dismiss.

Filed July 11, 1927.

* * * * *

Now comes the defendant, by his attorneys, and moves the Court that the above-entitled cause be dismissed, and for cause therefor says:

1. That the allegations in the petition of plaintiff filed herein show on their face that the alleged marriage on April 3, 1926, was void *ab initio*.

2. That on April 3, 1926, the plaintiff herein was the legal wife of one Clement E. Murphy, as alleged in said petition, and her attempted marriage on said date is void *ab initio*, under the provisions of Section 1283, of the Code of Law of the District of Columbia.

3. That the final decree of this court dated March 22, 1926, was not effective to annul the marriage of the plaintiff herein to Clement E. Murphy, until the expiration of the time allowed to take an appeal, under the provisions of Section 983a, of the Code of Law for the District of Columbia, as amended.

4. That Rule X, of the Court of Appeals allows twenty days for taking an appeal, from a decree of this Court, and the decree of March 22, 1926, was not effective to annul the marriage of the plaintiff herein to the said Murphy, until after April 15, 1926.

H. P. LONG &
J. NELSON ANDERSON,
Attorneys for Defendant.

Jean M. Boardman, Esq.,
Attorney for the Plaintiff:

SIR:

Please take notice that the above motion will be set for argument on Tuesday, July 12, 1927, at 10 A. M., or as soon thereafter as counsel can be heard.

H. P. LONG &
J. NELSON ANDERSON,
Attorneys for Defendant.

Decree Dismissing Petition.

Filed July 13, 1927

* * * * *

Upon consideration of the motion of the defendant to dismiss the petition filed herein by the plaintiff, it is by the Court, this 13th day of July, 1927,

Adjudged, ordered and decreed that the said petition be and the same hereby is dismissed.

JENNINGS BAILEY,
Justice.

Note of Appeal.

From the above decree the plaintiff notes an appeal to the Court of Appeals of the District of Columbia, and the bond for costs is hereby fixed at \$100.00 with the privilege of depositing in Court the sum of \$50.00 cash in lieu thereof.

JENNINGS BAILEY,
Justice.

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Memorandum.

July 14, 1927.—Undertaking on appeal, \$100.00, approved and filed.

Assignment of Error.

Filed July 18, 1927.

* * * * *

Comes now the plaintiff in the above-entitled cause and assigns as error committed by the Court the granting of the motion of the defendant to dismiss petition.

JEAN M. BOARDMAN,
Attorney for Plaintiff.

Service acknowledged this 18 day of July, 1927.

H. P. LONG,
Attorney for Defendant.

Designation of Record.

Filed July 18, 1927.

* * * * *

The Clerk will please prepare a transcript of record in the above-entitled cause on appeal to the Court of Appeals of the District of Columbia, and include therein the following:

1. Petition to Affirm Marriage.
2. Motion to Dismiss.
3. Decree Dismissing Petition.
4. Assignment of Error.
5. This Designation of Record.

JEAN M. BOARDMAN,
Attorney for Plaintiff.

Service acknowledged this 18 day of July, 1927.

H. P. LONG,
Attorney for Defendant.

6 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, Frank E. Cunningham, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages

numbered from 1 to 5, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 47186, in Equity, wherein Louise A. Tillinghast is Plaintiff and George S. Tillinghast is Defendant, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 29th day of July, 1927.

[Seal Supreme Court of the District of Columbia.]

FRANK E. CUNNINGHAM,

Clerk.

Endorsed on cover: District of Columbia Supreme Court. No. 4623. Louise A. Tillinghast, appellant, vs. George S. Tillinghast. Court of Appeals, District of Columbia. Filed Aug. 2, 1927. Henry W. Hodges, clerk.

(7094)

COURT OF APPEALS
DISTRICT OF COLUMBIA
FILED

SEP 27 1927

IN THE *Henry M. Hodges*
clerk
Court of Appeals, District of Columbia

APRIL TERM, 1927.

No. 4623.

LOUISE A. TILLINGHAST, *Appellant*,

vs.

GEORGE S. TILLINGHAST, *Appellee*.

BRIEF ON BEHALF OF APPELLANT.

JEAN M. BOARDMAN,
Attorney for Appellant.

IN THE
Court of Appeals, District of Columbia

APRIL TERM, 1927.

No. 4623.

LOUISE A. TILLINGHAST, *Appellant*,

vs.

GEORGE S. TILLINGHAST, *Appellee*.

BRIEF ON BEHALF OF APPELLANT.

STATEMENT OF THE CASE.

This case is before the Court on appeal from the Supreme Court of the District of Columbia.

The appellant, Louise A. Tillinghust, filed in said court a petition in equity for the affirmance of marriage under the provisions of Section 981 of the Code of Law of the District of Columbia, the allegations contained in said petition, insofar as they are material to this appeal, being as follows:

The appellant was formerly the wife of one Clement E. Murphy, but in a proceeding in the Supreme Court of the District of Columbia the said Murphy was awarded an annulment of marriage on the ground that the appellant was matrimonially incapacitated because of physical affliction at the time of marriage. An interlocutory decree was entered in said cause on December 11, 1925, and a final decree of annulment was entered therein on March 22, 1926. From this decree no appeal was taken by the appellant. On April 3, 1926, the appellant and the appellee, George S. Tillinghast, contracted a ceremonial marriage at Rockville, Maryland, at which time the facts surrounding the annulment of the appellant's former marriage were known to the appellee. Following their marriage, although he refused to provide a home for her, the appellee maintained marital relations with the appellant and lived with her intermittently until December 5, 1926, on which date he permanently abandoned her. The appellee denies the validity of the aforesaid marriage, alleging that at the time it was contracted the appellant's former marriage had not been lawfully dissolved. A child was born to the said parties on June 12, 1927, which child the appellee refused to support. The principal relief prayed by the appellant is that the said marriage be affirmed and declared valid, and that she be awarded an allowance for the support of her child.

The appellee, defendant below, moved to dismiss the the petition upon the ground that it appeared therefrom that the marriage of April 3, 1926, was contracted prior to the expiration of the time allowed for taking an appeal from the decree of March 22, 1926; that the said decree of March 22, 1926, had not become effective to annul the appellant's former marriage; and that the

marriage of the appellant to the appellee was void *ab initio* under the provisions of Section 1283 of the Code. This motion was granted and the petition dismissed.

ASSIGNMENT OF ERROR.

1. The granting of the motion to dismiss the petition.

ARGUMENT.

It is conceded that the marriage of April 3, 1926, was void *ab initio*, under the provisions of Section 1283 of the Code, and that the petition was properly dismissed, unless the decree of March 22, 1926, had become effective to annul the appellant's former marriage.

Section 983a of the Code provides as follows:

Sec. 983a. No final decree annulling or dissolving a marriage shall be entered until after the expiration of ninety days after the entry of an interlocutory order adjudging that a case for annulment or dissolution has been proved, and every such interlocutory order shall expressly state that no annulment or divorce is awarded by it. After the expiration of such period of ninety days a final decree shall be entered by the court, provided it is applied for within thirty days, but it shall not be effective to annul or dissolve the marriage until the expiration of the time allowed for taking an appeal, nor until the final disposition of any appeal taken, and every such final decree shall expressly so recite.

As to the time allowed for taking an appeal, paragraph 1 of Rule X of the Revised Rules of the Court of Appeals provides:

1. No order, judgment, or decree of the Supreme Court of the District of Columbia, or of any justice thereof, shall be reviewed by the Court of Appeals, unless the appeal shall be taken within 20 days after the order, judgment, or decree complained of shall have been made or pronounced.

The marriage of April 3, 1926, was contracted less than twenty days after the entry of the decree of March 22, 1926, awarding to the appellant's former husband an annulment of marriage, and if the words "until the expiration of the time allowed for taking an appeal" contained in Section 983a are to be strictly and literally construed in conjunction with Rule X of the Revised Rules of the Court of Appeals, the said decree had not become effective to annul the appellant's former marriage.

It is, however, the fundamental rule of statutory construction that the intention of the legislature be ascertained and given effect; and wherever the language of a statute is of doubtful meaning, or where a strict construction would lead to injustice, absurdity, or to contradictory provisions, the court will look to the purpose of the statute, will prefer the spirit and reason of the law to its letter, and will restrain general terms within the reason of the statute.

In Re Cahn, Belt, & Company, 27 App. D. C. 173.
Fields vs. United States, 27 App. D. C. 433.
United States of America vs. Day, 27 App. D. C. 458.

Moss vs. United States, 29 App. D. C. 188.
Garrison vs. District of Columbia, 30 App. D. C. 515.
District of Columbia vs. Dewalt, 31 App. D. C. 326.

In the case of *In Re Cahn, Belt, & Company*, 27 App. D. C. 173, at page 181 the Court quoted with approval from Lewis's *Sunderland*, Stat. Constr, sec. 633, as follows:

“The intent is the vital part, the essence of the law, and the primary rule of construction is to ascertain and give effect to that intent. ‘The intention of the legislature in enacting a law is the law itself, and must be enforced when ascertained, although it may not be consistent with the strict letter of the statute. Courts will not follow the letter of a statute when it leads away from the true intent and purpose of the legislature and to conclusions inconsistent with the general purpose of the act.’ ”

In *Moss vs. United States*, 29 App. D. C. 188, in which it was held that the words “any person” as employed in the act making it a crime to fail to support minor children in the District of Columbia applied only to parents of lawful children and not to parents of bastards, the Court, at page 195, said:

“It is, undoubtedly, the duty of the court to ascertain the meaning of the legislature, from the words used in the statute, and the subject-matter to which it relates, and to restrain its operation within narrower limits than its words import, if the court are satisfied that the literal meaning of its language would extend to cases which the legislature never designed to embrace in it.”

While it is true that when the language of a statute is clear and unambiguous it must be construed literally, yet “when the words of a statute are susceptible of different meanings at all, they are to be given that construction which tends to effectuate the general pur-

pose of their enactment.”—United States of America vs. Day, 27 App. D. C. 458.

Section 983a does not expressly provide that a final decree of annulment or divorce shall not be effective until the expiration of twenty days, nor does it expressly refer to a rule of court; and since the time in which an appeal may be taken may be terminated, under general law, by some occurrence other than the mere passage of the maximum time prescribed by rule of court in which an appeal may be taken, such a contingency is fairly embraced within the meaning of the words “until the expiration of the time allowed for taking an appeal.”

That the right of appeal is available only to a party aggrieved is too well established to require citation. It is equally well established that the right of appeal may be waived, and that a party who accepts the benefits of a judgment, order, or decree cannot thereafter maintain an appeal or writ of error to review it. In accordance with the rule last stated, it has generally been held that the right to have a decree of divorce reviewed on appeal or writ of error is waived if the party aggrieved thereby remarries.

Rariden v. Rariden, 33 Ind. A. 284, 70 N. E. 398.

Stebe v. Stebe, 163 Mich. 650, 129 N. W. 356.

Branch v. Branch, 30 Colo. 499, 71 P. 632.

Butts v. Butts, 238 S. W. 600.

In the case of Butts vs. Butts, *supra*, the appellant had remarried pending an appeal from a decree awarding a divorce to her husband. The court, in dismissing the appeal, said:

“It seems to be well settled by the authorities that an appeal from a decree of divorce cannot be prosecuted after the remarriage of the appellant,

for the reason that such a marriage constitutes an acceptance of the benefits of the decree and necessarily admits its legality and correctness.”

It is readily apparent that the purpose, and the only purpose, of the provision contained in Section 983a which suspends the taking effect of a final decree of annulment or divorce, is to preserve the status of litigants pending the possibility of further judicial proceedings. A marriage which is not void in its inception creates a status. The annulment or dissolution of a marriage terminates the preexisting status. It is, therefore, imperative to the protection of the interests of a litigant aggrieved that the marriage status, which is the very subject-matter of the suit, be not destroyed while there exists the right to have the proceedings of the court granting the divorce or annulment reviewed by an appellate tribunal.

It logically follows, however, that when the right of the litigant aggrieved to seek redress in an appellate tribunal has ceased to exist, the continued suspension of the taking effect of the decree is purposeless.

In the present case, the appellant's former husband, Murphy, had obtained the relief which he had sought; had no occasion and had no right to prosecute an appeal. The appellant, being the party aggrieved, was the only person who could have challenged by way of appeal the correctness of the decree. By her remarriage she accepted the decree as correct and thereby waived and forever lost her right to appeal. It is clearly not within the spirit and reason of the statute in question that the time allowed for taking an appeal shall be considered as not having expired regardless of the fact that if an appeal were attempted the same

would have to be dismissed because the right of appeal had ceased to exist.

In conclusion, therefore, it is respectfully submitted that by her remarriage the appellant waived her right of appeal; that within the spirit and reason of Section 983a the time allowed for taking an appeal from the decree of March 22, 1926, thereupon expired; that the said decree thereupon became effective to annul the appellant's former marriage; and that the marriage of the appellant and the appellee on April 3, 1926, was valid.

Respectfully submitted,

JEAN M. BOARDMAN,
Attorney for Appellant.

COURT OF APPEALS
DISTRICT OF COLUMBIA
FILED

IN THE

OCT 17 1927

Court of Appeals of the *W. Hodges*
District of Columbia *Shirk*

April Term, 1927

No. 4623

LOUISE A. TILLINGHAST, *Appellant,*

VS.

GEORGE S. TILLINGHAST, *Appellee.*

BRIEF IN BEHALF OF THE APPELLEE

HALLOCK P. LONG,
RICHARD L. MERRICK,
J. NELSON ANDERSON,
Attorneys for Appellee.

IN THE
**Court of Appeals of the
District of Columbia**

April Term, 1927

No. 4623

LOUISE A. TILLINGHAST, *Appellant*,

. VS.

GEORGE S. TILLINGHAST, *Appellee*.

BRIEF IN BEHALF OF THE APPELLEE.

STATEMENT OF THE CASE.

The facts recited in the Appellant's brief correctly state the case, and the question of law involved in this appeal.

ARGUMENT.

It is contended by the Appellee that the ceremonial marriage between the parties on April 3, 1926, was void *ab initio*, under the provisions of Section 1283 of the Code of Law of the District of Columbia, which provides—

“The following marriages are prohibited in the District of Columbia and shall be absolutely void *ab initio*, without being so decreed, and their nullity may be shown in any collateral proceedings:

* * *

Third. The marriage of any persons either of whom has been previously married and whose previous marriage has not been terminated by death or decree of divorce.”

Appellant was previously married to one Clement E. Murphy, and although the marriage was voidable it created a status, which continued to exist until that marriage was terminated by a valid decree of divorce or annulment. A decree annulling the marriage was signed March 22, 1926, and the sole question in this case is the date on which that decree was effective to annul her marriage to Murphy. The statute governing is section 983a of the Code of Law for the District of Columbia, which is quoted in full in Appellant's brief, which provides that a final decree “shall not be effective to annul or dissolve the marriage until the expiration of the time allowed for taking an appeal.” “The time allowed for taking an appeal” is set at twenty days, by Rule X, paragraph 1, of the Rules of this Court, also quoted in full in Appellant's brief,

which provides that no decree of the Supreme Court shall be reviewed by this Court, "unless the appeal shall be taken within 20 days after the order, judgment, or decree complained of shall have been made," and Rules of Court

"have the force of law, and are binding upon the court and upon the suitors, and those who represent suitors." *Murphy v. Gould*, 39 App. D. C. 363.

Appellant takes considerable space in his brief to consider the rule of statutory construction that where a statute is of doubtful meaning, or where strict construction would lead to injustice, absurdity or contradictions, the courts will look to the spirit and reason of the law, and not to its letter. Without taking time to discuss this rule, it is submitted that there is no doubt, absurdity, contradiction or injustice in the language of section 983a. The statute clearly says that the decree was not effective nor the marriage annulled "until the expiration of the time allowed for taking an appeal," which by reference to Rule X, *supra*, is twenty days after its date. This is just as certain and definite as though the law had said that the decree was not effective to annul the marriage "until the expiration of twenty days from date" or "until April 15, 1926."

The statute in force in this District should not be confused with the laws in many of the states, which prohibit remarriage for a certain period after the date of the decree, the violation of which prohibition presents an entirely different question to the Courts. In

construing such statutes it seems to be the general rule that such prohibitions are penal and have no extra-territorial force. The statute here is distinctly different from such laws, in that it contains no prohibition against remarriage, but provides that the prior marriage is annulled, not on the date of the decree, but on the expiration of the time allowed for the taking of an appeal. Even where the statute does not specifically state that a decree is effective to dissolve an existing marriage only after the expiration of the time for appeal, and merely prohibits remarriage pending that period, an attempted marriage would be a nullity.

“Under a statute prohibiting remarriage within the time allowed for an appeal from the decree of divorce, it is generally held that a remarriage is void because the decree of divorce does not terminate the former marriage until the expiration of the time for review.” R. C. L., Sup. Vol. 2, page 819, Sec. 329, L. R. A., 1916C 750 note.

Appellant contends that by her remarriage prior to the expiration of the time allowed for appeal, she abandoned her right of appeal, and hence the decree was effective to annul her prior marriage on the date of her remarriage. It is difficult to follow this reasoning—she could not remarry until her prior marriage was dissolved. Her prior marriage was not dissolved until the expiration of the time for appeal. However, if she goes through a marriage ceremony before the time for appeal has expired, that ceremony results in her prior marriage being dissolved forthwith, whereupon this latter ceremony becomes a valid marriage. Appellee contends that this reasoning is unsound and

that the dissolution of the prior marriage is unconditionally a condition precedent to the valid remarriage of the appellant. Appellant cannot by her own act or disregard of the law, change her decree of divorce so that it will become effective on a date different from that which the law requires it to recite by its own terms.

Sec. 983a, of the Code of Law, (which has only been the law since April 19, 1920), does not appear to have been construed by this Court. However, in the case of *Olverson v. Olverson*, 54 App. D. C. 48, this court was confronted with a case on most points identical with the case at bar. In the *Olverson* case, Mrs. Olverson had been the defendant in a suit for absolute divorce in the District of Columbia, in which her former husband had been successful, and under the provisions of Section 966 of the Code was prohibited from remarrying. Notwithstanding this prohibition, she and Olverson went into Maryland and were married, although both were residents of the District of Columbia. Later she filed suit in the District, praying that her marriage to Olverson be affirmed, and that she be granted a limited divorce and alimony, and a decree was passed denying her motion for alimony *pendente lite*, and dismissing her bill. In affirming the lower Court this Court said:

“By her bill of complaint the appellant demands that she be recognized as the lawful wife of appellee, and prays in effect that the obligations of the status assumed by her in flagrant defiance of the laws to which she was subject be modified or enforced, as her benefit or advantage may require.

“We do not think that the courts of the District can be used for that purpose. The Appellant deliberately set at naught a District statute, which she was bound to respect and obey, and she cannot now ask the courts of this jurisdiction to relieve her of the obligations of a relation which she wilfully and wrongfully assumed, or to enforce the right to support which would have been hers, had the relation been lawfully contracted in the District.

“It is the special duty of courts to discourage infractions of the laws and fixed policies of the particular division of the national domain to which they are accredited, and they cannot aid litigants in securing the benefit of illegal transactions or illegal acts, without bringing such laws and policies into contempt. Judicial tribunals may well decline, therefore, to lend their support to claims which are directly and immediately founded upon a violation of the statutes of their territorial jurisdiction. (Citations of authorities.)

“We are of the opinion that a husband or wife, divorced on the ground of adultery, who defies the ban of Section 966, should not be permitted to take advantage of his or her own wrong, and should be left as found in the relation unlawfully taken.”

The situation in the Olverson case, *supra*, with one exception, is the situation in the case at bar. Here the appellant's prior marriage had been annulled on the suit of her former husband. Prior to the final decree becoming effective, she with appellee went to Maryland

and were married, in defiance of the District law. Later she filed suit to affirm her marriage, and made motion for alimony *pendente lite*. The lower court dismissed her bill and denied alimony, and she is here on appeal. The one exception is that in the Olverson case, *supra*, appellant had violated a prohibition against remarriage, whereas in the instant case she had remarried prior to her decree becoming effective to dissolve her prior marriage. The reasoning of the learned justice in the Olverson case applies with greater force to the case at bar, as whereas in the former case, as heretofore pointed out, a prohibition against remarriage has in many jurisdictions been held to be penal, and have no force extraterritorially, a remarriage prior to the former decree becoming effective is everywhere held to be an absolute nullity.

In the recent case of Simmons v. Simmons, reported in Vol. 55, W. L. R., No. 24, at page 410, decided by this Court May 2, 1927, a similar situation was involved. There the wife had obtained a fraudulent decree of divorce in Virginia, later marrying Simmons. Thereafter she sued Simmons for absolute divorce in this District, and a cross-bill was filed for annulment of her marriage to Simmons, on the ground it was void *ab initio*, under Section 1283 of the Code. The lower court dismissed the cross-bill, on the ground that Simmons was in *pari delicto*, and did not come into Equity with clean hands. This court in an exhaustive opinion reversing the lower court, and citing many authorities, including the case of Olverson v. Olverson, 54 App. D. C., 48, *supra*, said:

“The law declares such a marriage void, and the court is without power to validate it, or to in

any respect require the parties to live together, or in any manner recognize the validity of the marriage. It is void in law, and the courts have no alternative when the matter is presented, either directly or collaterally, in any matter in which it becomes an issue, but to declare it so.

“It follows, we think, that where it appears to the court that a marriage is an absolute nullity, the duty under the law of this District is to decree such a marriage void and prevent any further criminal union of the parties.”

It is submitted that on the date of appellant's attempted marriage to appellee on April 3, 1926, she was still in law the wife of Clement E. Murphy, and the said attempted marriage was void, *ab initio*, under section 1283 of the Code of Law of the District of Columbia. That the decree of March 22, 1926, was not effective to dissolve her subsisting marriage to Murphy until the expiration of the twenty days allowed for appeal, and that no act of the appellant whether in ignorance or in defiance of the clear provisions of the statute, could render that decree effective at an earlier date than that provided by law. That the decree of the lower Court dated July 13, 1927, dismissing appellant's petition to affirm the said alleged marriage, was properly passed, and should be affirmed by this Court.

Respectfully submitted,

HALLOCK P. LONG,
RICHARD L. MERRICK,
J. NELSON ANDERSON,
Attorneys for the Appellee.

